



INTERIOR BOARD OF INDIAN APPEALS

Estate of Eugenia Catherine Apodaca

31 IBIA 55 (07/08/1997)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF EUGENIA CATHERINE
APODACA

: Order Docketing and Dismissing
: Appeal
:
: Docket No. IBIA 97-135
:
: July 8, 1997

On July 3, 1997, the Board of Indian Appeals (Board) received a notice of appeal from Cynthia Varela (Appellant), through counsel, Jeremy Hass, Esq., Santa Barbara, California. Appellant seeks review of an April 30, 1997, decision issued by Administrative Law Judge James H. Heffernan in the above estate. Probate No. IP PH 124I 96.

Because Appellant's Notice of Appeal did not include a copy of the decision, the Board requested and received a copy from Judge Heffernan's office. The decision includes the following information: "This decision is final for the Department [of the Interior] unless a petition for rehearing is properly filed in accordance with 43 CFR 4.241 within 60 days from the date hereof as set forth in the notice attached hereto." The notice attached to the decision repeats that the decision "becomes final sixty (60) days from the date of mailing of this notice unless within such period a written petition for rehearing shall have been filed with the superintendent by the aggrieved party in accordance with the provisions of 43 CFR 4.241."

The Board's probate regulations in 43 C.F.R. § 4.320 provide that it has jurisdiction over "an order of an administrative law judge on a petition for rehearing, a petition for reopening, or regarding tribal purchase of interests in a deceased Indian's trust estate." Because Appellant has not sought rehearing from Judge Heffernan, this appeal is premature. Estate of Bernard Whittier, 20 IBIA 86 (1991); Estate of Richard Lip and Estate of Riley M. Glenn, 15 IBIA 97 (1987).

Should Appellant file a timely petition for rehearing in accordance with 43 C.F.R. § 4.241, she will be informed of the right to further review.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from Judge Heffernan's April 30, 1997, decision is docketed but dismissed as premature

//original signed

Kathryn A. Lynn
Chief Administrative Judge

//original signed

Anita Vogt
Administrative Judge